Supreme Court, U.S.
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No. 91-689

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CITIBANK, N.A.,

Petitioner,

v.

WELLS FARGO ASIA LIMITED,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITIONER'S SUPPLEMENTAL BRIEF PURSUANT TO RULE 15.7 IN RESPONSE TO RESPONDENT'S SUPPLEMENTAL BRIEF

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Pursuant to Rule 15.7 of the Rules of this Court, Petitioner, Citibank, N.A. ("Citibank"), files this brief in response to the Brief for Respondent in Opposition to the Brief for the United States as *Amicus Curiae* (filed June 5, 1992) ("Supp. Br.").

On June 1, 1992, the Solicitor General, on behalf of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Departments of State and the Treasury, filed a brief urging the Court to grant Citibank's petition for certiorari and reverse the judgment of the court of appeals. In his brief, the Solicitor General stated that this case "raises

legal issues of great commercial and regulatory consequence," [1] and concluded:

> We submit that the court of appeals erred both in its determination of applicable law and its analysis of the content of that law. A federal rule should control the issue in this case. Under that rule, a U.S. bank should not be held liable to repay an expropriated or restricted foreign branch deposit from its home office assets unless the parties have specifically agreed to such repayment. There is a genuine need for this Court to clarify this important point of law.

U.S. Br. at 20. *See also id.* at 10.

Although Respondent's supplemental brief purports to respond to the Solicitor General's brief, it offers no response at all; as before, Respondent completely ignores the importance of this case to the United States and the international financial community, and its argument on the merits depends on the assertion that the federal banking agencies do not understand the legal framework they are charged with administering. In sum, the supplemental brief restates the tired arguments made in the Brief for Respondent in Opposition (filed Dec. 13, 1991) to which replies already have been made. Accordingly, for the Court's convenience, we here refer to the pages of previous submissions that disposed of these contentions.

1. Respondent again argues that the Court need not reach the legal issue that the Solicitor General stated is of great consequence, because Citibank's Manila branch ("Citibank/Manila") never requested permission to repay Respondent's deposits, and, therefore, as the argument goes, it could have repaid the deposits all along. (Supp.

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[1] Brief for the United States as *Amicus Curiae* at 10 (filed June 1, 1992) ("U.S. Br."). *See also* U.S. Br. at 11, 15, 20 (noting importance of issue presented); Petition for a Writ of Certiorari at 10-11, 19-23, 25-26 (filed Oct. 24, 1991) ("Pet.") (same); Reply Brief of Petitioner at 1-3 (filed Dec. 23, 1991) ("Reply Br.") (same and noting Respondent's failure to address importance of case).

Br. at 3-4.) Every decision in this case has found that Citibank/Manila has been prevented by Philippine law from repaying the principal of Respondent's deposits with its assets, and Respondent's argument that Citibank/Manila did not adequately seek permission to repay Respondent conflicts with the undisturbed findings below. (Reply Br. at 6-7.)[2] Respondent also still appears to be of the view that it should prevail because Citibank's home office did not request Philippine government permission to repay Respondent out of its assets. However, whether Citibank's home office could repay Respondent (with or without Philippine government approval) is irrelevant and simply begs the dispositive question framed by this Court (*see* Pet. App. B. at 19a) of whether Citibank's home office is *obligated* by applicable law to do so. (Pet. at 19 n.30; Reply Br. at 6-7.)

2. Respondent again argues that there is no pertinent federal law applicable to this case, and, alternatively, there is no conflict between federal and state law (as interpreted by the court of appeals). (Supp. Br. at 1-2, 5-8.) The content and applicability of federal law (and its conflict with the court of appeals' version of New York law) are set forth in full in Citibank's previous submissions. (Pet. at 11-19, 23-26; Reply Br. at 3-6.) The banking agencies have interpreted their rules in accordance with those principles of federal law. And, the Solicitor General has advised the Court, as he advised the court below, that the "federal rule" advocated in the Petition "should control the issue in this case," (U.S. Br. at 20), and that there is "a compelling basis . . . for applying [this] rule." *Id.* at 17. *See also id.* at 2-4, 18-20 (discussing source and content of applicable federal rule).

3. Respondent again alludes to the fact that one of the hundreds of proposed provisions that did not end up in

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[2] Respondent's repeated contention (Supp. Br. at 3-4) that Citibank/Manila's ability to remit profits was, under Philippine law, interchangeable with its ability to repay Respondent is wrong. (Reply Br. at 7-8.)

last year's banking legislation addressed the issue of allocation of sovereign risk. (Supp. Br. at 2.) The fact that Congress failed to enact this provision is of no legal significance. (Reply Br. at 8.)

CONCLUSION

Accordingly, the Court, as urged by the Solicitor General, the Petitioner, and *amici* representing the international banking community, should grant Citibank's petition.

Respectfully submitted,

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